

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 139 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

REVABEN BABULAL MISTRY

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Appearance:

MR MANISH R BHATT for Petitioner  
SERVED BY RPAD - (N) for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA. and  
MR.JUSTICE A.R.DAVE

Date of decision: 23/12/98

ORAL JUDGEMENT

1. For the assessment year 1977-78 to 1978-79  
a common statement of the case has been submitted  
and following question of law has been referred to  
this court for its opinion by the Income Tax  
Appellate Tribunal, Ahmedabad Bench B arising out

of order of the Tribunal in ITA Nos. 1950 to 1957/Ahd/81:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the sum of Rs.85,266/- being the share of the husband of the assessee, in a representative capacity as the karta of the HUF in the firm of M/s. Morvi Time Co. was not liable to be included in the income of the assessee under the provisions of Section 64 of the Income-tax Act, 1961?"

2. As the question suggests that where a person is partner in a firm not in his capacity as an individual but in his capacity as karta of Hindu Undivided Family and he is liable to be assessed in respect of such income from the share of profit in the firm in his status otherwise than as an individual, whether the share income from such firm accruing to the spouse or minor children of such partner is liable to be clubbed in the income of respondent assessee. The Tribunal held it to be not liable to be so clubbed.

3. It has been candidly stated by the learned counsel for the revenue that the question has been squarely answered against the revenue by the Supreme Court CIT & Ors. v. Shri Om Prakash and others 217 ITR 785.

4. In view of the aforesaid, we answer the question referred to us in affirmative, that is to say, in favour of the assessee and against the revenue.

No one has appeared on behalf of the assessee in spite of service.

There shall be no order as to costs.

(Rajesh Balia, J)

(A.R. Dave, J)